

1 ARLO H. SMITH #96971
2 66 San Fernando Way
3 San Francisco, CA 94127
4 (415) 681-9572
5

6 Attorney for Matthew D. Sawyer
7 Beverly Kennedy
8 Ruben Hernandez, Jr.
9 R.I. Refrigeration Supply Co., Inc.
10 Janele Skinner-Weill, Winan' Wichapi
11 To, Inc., Theodore C. Weill,
12 Terry P. Weill
13 Universal Wearparts, Inc.
14

15
16 U.S. District Court, Northern District of California
17

18 Rodney Martin et al.

NO. CV 07-05747 CW

19
20 Plaintiffs

**AMENDED NOTICE OF
MOTION TO
DISMISS**

21
22
23 vs.
24

[FRCP 12(b)(1), (2), (3) & (6)]

25
26 D. Andrew Byrne et al.,

Hearing: Feb. 21, 2008
2:00 PM
Courtroom 2

27
28 Defendants
29
30
31

32 Notice is hereby that on January 23, 2008, at 2:00 PM, Courtroom 2,
33
34 4th Floor, 1301 Clay St., Oakland, CA, defendants listed in the above
35
36 caption will move for dismissal of this action, or in the alternative, for abstention
37
38 under the doctrine of forum nonconveniens.
39

40 Said motion will be made on the following grounds:

41
42 (1) This court lacks subject matter jurisdiction over this dispute,
43
44 which is within the sole jurisdiction of the Federal Election Commission ("FEC")
45
46 FRCP 12 (b) (1).
47

1 (2) This court lacks personal jurisdiction over defendant, who is a
2
3 resident of Texas and who lacks minimum contacts with CA. Assuming
4
5 *arguendo*, that minimum contacts did exist California. Would not be a convenient
6
7 forum. FRCP 12 (b) (2)
8

9 (3) This court lacks venue over this dispute since no defendant resides
10
11 in CA, and the claim did not arise in CA. FRCP 12 (b) (3)
12

13 (4) Defendant has failed to state a claim upon which relief can be
14
15 based, including but not limited to the following issues:
16

17 (a) The FEC has exclusive jurisdiction over this dispute.
18

19 (b) The requisite allegations of distinctive, directness and predicate
20
21 acts necessary to support a RICO claim are lacking
22

23 (c) Defendant has alleged a conspiracy between three attorneys and
24
25 their clients but has not complied with the pre-filing judicial approval requirements
26
27 of California Civil Code 1714.10
28

29 (d) The action is barred by California Code of Civil Procedure Section
30
31 425.16, since it is brought against defendants for engaging in constitutionally-
32
33 protected activities, including litigation, and plaintiff cannot factually show a
34
35 reasonable probability of prevailing on such claims.
36

37 FRCP 12 (b) (6)
38

39 Said motion is made on the basis of this notice, the files, records and
40
41 papers herein (including the previously filed memorandum in support of said
42
43 motion, and such other and further matters as may be offered at or before said
44
45 hearing.
46
47

1 DATED: 1/16/08
2

3 ARLO H. SMITH , Attorney for Matthew D.
4 Sawyer, Beverly Kennedy, Ruben Hernandez,
5 Jr. , R.I. Refrigeration Supply Co., Inc.
6 Janele Skinner-Weill, Winan' Wichapi
7 To, Inc., Theodore C. Weill,
8 Terry P. Weill, Universal Wearparts, Inc.
9

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47